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86-992

Supreme Court, U.S.
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In the Supreme Court
of the United States
October Term, 1985
No.

John E. Reardon
8 Winding Way
Gibbsboro, N.J. 08026
(609) 783-6426

Petitioner,

vs.

Virginia Reardon; Vincent Segal, Esq.; Firm of Segal & Tropp; Richard Klein, Esq.; Firm of Melnick, Morgan, Klein & Cetti; Dr. Hopkins; Maffucci Realty; Ed Kelleher; Judge Page; Judge Mennetti; Judge DiMartino; Judge Wallace; N. J. Att. Gen. Mr. Kimmelman; Camden County Court System and the State of N.J.

Respondents,

Supplemental Appendix

Affiliation with Nat
Denman's Justice PRO-SE.
Membership date of 1/86.

25 pp

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN E. REARDON,	:	Civil Action No. 84-3696
Plaintiff,	:	
v.	:	
VIRGINIA A. REARDON, VINCENT D. SEGAL, ESQUIRE and SEGAL & TROPP,	:	
Defendants.	:	

* * * * * *

JOHN E. REARDON,	:	Civil Action No. 84-5203
Plaintiff,	:	
v.	:	
	:	
JOHN E. WALLACE and ROBERT W. PAGE, JUDGES; RICHARD KLEIN, ESQ. and MELNIK, MORGAN, KLEIN & CETTEI; VIRGINIA E. REARDON; VINCENT SEGAL and SEGAL & TROPP; I.V. DiMARTINO and EDWARD F. MENNETI, Judges; CAMDEN COUNTY COURTS; and THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,	:	
Defendants.	:	

JOHN E. REARDON,	:	Civil Action No. 85-97
Plaintiff,	:	
v.	:	
	:	
VIRGINIA E. REARDON; VINCENT SEGAL, ESQ.; SEGAL & TROPP; EDWARD F. MENNETI; I.V. DiMARTINO; CAMDEN COUNTY COURTS; ATTORNEY GENERAL and THE STATE OF NEW JERSEY.	:	
Defendants.	:	OPINION

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BROTMAN, District Judge

Plaintiff John E. Reardon has filed in this court three related civil rights actions arising out of divorce and child custody litigation in which he is involved before the New Jersey Superior Court. In each instance, this court's jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343. Plaintiff, who is proceeding **pro se**, challenges as unconstitutional various acts by private citizens and state officials connected with his lawsuit in state court. In addition, plaintiff asks this court to adjudicate substantive issues of state law related to his divorce action.

Presently before the court are a series of motions brought by the plaintiff in order to expand the scope of two of his complaints. An initial review of the pleadings left the court with serious doubts as to the existence of jurisdiction to consider plaintiff's claims. In order to resolve this controversy in an expeditious manner, the court, on its own motion, asked the parties to consider several additional matters at oral argument: whether plaintiff's complaints should be consolidated; and whether plaintiff's claims should be dismissed for lack of subject matter jurisdiction or for failure to state a claim upon which relief may be granted. Before addressing the pending motions, the court will review the history and content of this litigation.

Background

Under the guise of the civil rights laws, 42 U.S.C. §§ 1983 and 1985, plaintiff seeks relief in the federal courts from a series of setbacks in matrimonial litigation in state court. Plaintiff's extensive pleadings challenge decisions of the New Jersey judiciary concerning custody of his children, his divorce from Virginia Reardon and disposition of his marital residence. According to plaintiff, he has been unsuccessful in state court because private persons and public officials have acted on their own and in concert to deprive him of federal rights.

The court will now proceed to a detailed examination of the three civil actions filed by plaintiff. The following facts are alleged by plaintiff and are uncontroverted by defendants, except as otherwise indicated.

1. *Civil Action 84-3696*

At some time during or before 1983, plaintiff and his wife, Virginia E. Reardon, became involved in divorce and custody proceedings. Docket No. M-04123—83. On or about May 31, 1983, Judge Judith A. Yaskin of the New Jersey Superior Court entered an order declaring plaintiff to be the custodial and residential parent for the Reardons' two minor children. See Complaint, Civ. No. 84-3696 at 3.

On November 8, 1983, plaintiff received word from his attorney, Richard C. Klein, Esquire, that counsel for his wife would appear in court the next day with an order to show cause. On November 9, 1983, Virginia Reardon presented such a petition in New Jersey Superior Court seeking to establish custody over the Reardon children. Mrs. Reardon alleged that denial of the relief requested would cause immediate, substantial and irreparable harm to her and her children. Judge Robert W. Page heard the matter and signed the proposed order. Complaint at 3-4. In November and December, 1983, Judge Page presided over several other matters related to the Reardons' case. During this period, plaintiff repeatedly requested Judge Page to recuse himself on the ground that the judge knows his wife, who works as a clerk in New Jersey Superior Court, Camden County. Each time, Judge Page refused to do so. Id. at 4.

On July 17, 1984, plaintiff filed suit in United States District Court[1]. The complaint named the following defendants: Virginia Reardon; Judge Page; Vincent Segal, Esquire, Mrs. Reardon's attorney; and the firm of Segal & Tropp, with whom Segal is a partner. Pursuant to 42 U.S.C. §§ 1983 and 1985, and the Fourteenth amendment to the United States Constitution, plaintiff alleges that the defendants conspired to deprive him of custody of his children without due process. Specifically, the complaint asserts that defendants failed to notify plaintiff of the proceedings on November 9, 1983, and prevented plaintiff from having a fair and impartial hearing on that day. Com-

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[1]/ Plaintiff originally asserted claims in the Eastern District of Pennsylvania. The parties agreed to transfer this action to the District of New Jersey.

plaint at 1-2, 3. Judge Page is alleged to have acted without jurisdiction and under the influence of his work relationship with Virginia Reardon. Id. at 2, 4-5. According to plaintiff, Judge Page's decision unfairly shifted the burden of proof regarding custody to plaintiff. Id. at 6.

Some time in October 1984, counsel for plaintiff and defendant Page approved a stipulation of dismissal with prejudice of all claims between the two parties. The stipulation was filed with this court on October 26, 1984 and on January 22, 1985, this court found plaintiff consented to the stipulation, and, accordingly, denied plaintiff's motion to reinstate his claims for injunctive relief against Judge Page[1]. The same opinion granted plaintiff's motion to discharge his attorney, William G. Blasdel, Jr., Esquire.

The court now faces several additional motions by plaintiff. First, plaintiff has moved to reinstate Judge Page as a defendant. Second, plaintiff seeks to amend the complaint to add the following new defendants: Richard C. Klein, Esquire ("Klein"), his attorney in state court; the law firm of Melnik, Morgan, Klein & Cettei ("Melnik, Morgan"), of which Mr. Klein is a partner; and William I. Hopkins, a licensed psychologist appointed by Judge Page to evaluate plaintiff, his wife and their children for purposes of certain divorce and custody proceedings. Third, plaintiff seeks to "preserve" his "rights to prosecute" the defendants pursuant to 18 U.S.C. § 241, the criminal analogue to 42 U.S.C. § 1985, should he prevail on his civil claims.

In papers filed January 25, 1985, plaintiff asked the court to grant him further injunctive relief. The court denied plaintiff's request for temporary restraints and agreed to hear the issues raised by plaintiff on short notice on February 1, 1985. The primary relief sought by plaintiff is removal to federal court of all state court proceedings concerning his divorce. Plaintiff requests the court to interview his children as to their custody preferences and also demands that the court enjoin the New

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[1]/ The court denied plaintiff's motion for reconsideration on March 4, 1985.

Jersey courts from taking further action in this matter. Finally, plaintiff asks the court to award him temporary custody, pendente lite, and to enjoin his wife from interfering with such custody.

Plaintiff's motion to add new defendants and to reinstate Judge Page as a defendant is based on allegations as to events in November and December, 1983. Plaintiff asserts that he has further evidence of a conspiracy against him. According to plaintiff, his former attorney, Richard Klein, Esquire, acted contraary to his wishes and best interests by rejecting litigation tactics he favored. In particular, plaintiff complains that Klein refused to seek disqualification of Judge Page on grounds of conflict and interest and bias. Plaintiff also challenges the judge's reliance on the testimony of William Hopkins. According to plaintiff, Hopkins was also biased in favor of Mrs. Reardon; as a result, he reached unwarranted conclusions in his testimony and gave evidence on matters beyond his expertise.

2. ***Civil Action 84-5203***

Proceeding on his own, plaintiff filed a second complaint on December 13, 1984. Plaintiff named several defendants other than those cited in the initial complaint: Judge John E. Wallace, Judge Edward F. Menneti, and Judge I. V. DiMartino, all of the New Jersey Superior Court, Camden County; Richard Klein, Esquire; the firm of Melnick, Morgan; the "Camden County Courts"; and the Attorney General of the State of New Jersey. Plaintiff asserts claims against these defendants under 42 U.S.C. § 1983 and the equal protection and due process clauses of the Fourteen Amendment.

Plaintiff's second action concerns events alleged to have occurred in September and October, 1984. A major aspect of the complaint is plaintiff's assertion that defendants Klein and Page conspired to prevent him from exercising his right to appeal a final judgment to divorce signed by Judge Page on July 23, 1984. Under Rule 2:4-1(a) of the New Jersey Rules Governing Appellate Practice, an appeal was permissible within 45 days of the order. Therefore, an appeal was due September 6, 1984. On August 21, 1984, defendant Klein sent plaintiff a letter notifying him of the date of his judgment and of the 45-day

deadline for appeal. Plaintiff contends that Klein failed to file papers in support of an appeal after plaintiff informed Klein of his desire to appeal.

The remaining portions of plaintiff's second complaint concern events surrounding an order to show cause filed by Vincent Segal, Esquire, counsel for Mrs. Reardon, and which was heard on September 14, 1984 by Judge Menneti. According to plaintiff, it was improper for the judge to consider the motion as he has a "cordial working relationship" with plaintiff's ex-wife. Plaintiff challenges Judge DiMartino's decision, as Camden County assignment judge, to direct Judge Menneti to hear the case. Plaintiff also accuses Judge Menneti of showing bias against him by preventing him from presenting witnesses at the hearing and by refusing his request for a delay in the proceedings. Plaintiff asserts Judge DiMartino also revealed bias by appearing at a conference in Judge Menneti's chambers on the day of the hearing.

At the September 14, 1984 hearing, defendant Klein withdrew as plaintiff's counsel. Plaintiff challenges his right to do so without giving plaintiff adequate notice. Judges Menneti and Wallace are accused of violating plaintiff's rights by permitting Klein's improper withdrawal, in that, Judge Menneti approved the motion to withdraw at the hearing, and Judge Wallace signed an order on October 5, 1984 giving effect to the withdrawal.

Plaintiff joins the Camden County Court system as a defendant based on general allegations of its complicity in the acts described above. Plaintiff has failed to assert any particular misdeeds by individual court employees or certain offices within the system. On the other hand, plaintiff claims the Attorney General of New Jersey refused to respond to his complaints concerning improper conduct by several state judges. Finally, plaintiff claims defendant Klein allowed him to enter into an "illegal" mortgage agreement which "violates the truth in lending laws."

In his second complaint, plaintiff seeks the following relief: (1) an injunction pendente lite against further matrimonial proceedings in state court; (2) seizure of files and tapes associated with his state court case; (3) seizure of Klein's file

concerning his work for plaintiff; (4) an injunction barring collection of fees plaintiff owes Klein; and (5) "preservation" of plaintiff's "right" to prosecute the defendants under federal criminal law.

Plaintiff now moves to join two new defendants: Maffucci Realty, Inc. ("Maffucci"); and Edward Kelleher, a real estate agent for Maffucci. Both parties allegedly conspired with Judge Menneti, Segal, and Virginia Reardon to secure the release of a prospective buyer's deposit on the purchase price for the Reardons' home, without plaintiff's permission. According to plaintiff, such action was detrimental to his interest in the sale of his home and violated his rights to control the disposition of property he owns with his ex-wife. "Amendment to Complaint," January 1, 1985 at 1-2. In addition, plaintiff asks the court to preserve his rights to prosecute in connection with these new claims. Finally, plaintiff has brought a motion for final judgment by default against every defendant except Segal and his law firm, who had previously submitted an answer to the complaint. The court docket registered an entry of default against these defendants. At oral argument, the court vacated default against the state defendants for good cause shown.

3. ***Civil Action 85-97***

On January 14, 1985, plaintiff filed a third action based on 42 U.S.C. § 1983 and the federal constitution which alleges violations of his rights to due process and equal protection. The complaint is brought against plaintiff's ex-wife, Vincent Segal, Esquire, Segal's law firm, Judge Menneti and Judge DiMartino, the Camden County County Court system, the state Attorney General and the State of New Jersey. Plaintiff alleges that Judge Menneti and the other defendants violated his civil rights in connection with proceedings in Superior Court related to the disposition of the Reardons' house. According to plaintiff, Judge Menneti signed an order appointing an attorney to execute an agreement to sell the Reardons' house without plaintiff's consent and without obtaining an order finding plaintiff incompetent to decide whether to enter into such a contract. Once again, plaintiff also asks the court to enjoin further state proceedings arising out of plaintiff's divorce.

Plaintiff also asks for damages, "preservation" or rights to prosecute and an order reversing Judge Menneti's ruling appointing an attorney to dispose of plaintiff's house. The court has received answers denying these allegations from every defendant named in this third action except Virgninia Reardon, who has yet to submit responsive pleadings.

Analysis

1. ***Consolidation of Pending Matters***

It is plain from a review of plaintiff's voluminous pleadings that his three cases raise common issues of law and fact. To some extent, each complaint focuses on a different set of events. Nevertheless, all three lawsuits arise out of a single controversy being adjudicated in New Jersey Superior Court. Plaintiff has brought claims against nearly every private citizen and public official having some connection to those proceedings. Separate adjudication of plaintiff's various claims has already caused considerable confusion for the court and other parties to this action. Plaintiff's pleadings are duplicative and repetitive. Accordingly, the court determines, on its own motion, and in an exercise of its discretion under Fed. R. Civ. P. 42(b), that the three actions brought by plaintiff should be consolidated and heard together.

2. ***Sufficiency of the Pleadings***

Based on serious questions as to its power to adjudicate plaintiff's claims, the court asked the parties to consider whether the complaints should be dismissed for lack of subject matter jurisdiction or failure to state a cause of action. A trial court may consider the issue of subject matter jurisdiction at any time, on its own initiative. Judgment on the pleadings for failure to state a claim may also be granted sua sponte "provided the complaint affords a sufficient basis for the court's action." **Bryson v. Brands Insulations, Inc.**, 621 F.2d 556, 559 (3rd Cir. 1980). In the court's opinion, there is no doubt that plaintiff's voluminous pleadings present adequate grounds for review pursuant to Fed. R. Civ. P. 12(b)(6).

In evaluating the sufficiency of the pleadings, the court has made every effort to discern a valid basis for plaintiff's alleged

federal claims. The court is well aware of the rule permitting dismissal of a complaint for failure to state a claim only when it appears that plaintiff can prove no set of facts sufficient to support his claims for relief. **Conley v. Gibson,** 355 U.S. 41, 44-45 (1958); **Bryson v. Brands Insulations, Inc., supra** Accordingly, the court has viewed plaintiff's allegations in the light most favorable to him, and has drawn all reasonable inferences in his favor. **Bryson, supra; Mortensen v. First Federal Savings and Loan Association,** 549 F.2d 884, 891 (3rd Cir. 1977). The court has considered plaintiff's three complaints, various exhibits attached thereto, and several amendments to the complaints previously submitted by plaintiff. In order to further accommodate plaintiff, the court will grant his motions to amend in so far as they concern new claims of harm for which the defendants are allegedly responsible.

A. ***"Rights" to Prosecute***

Plaintiff's motions and pleadings seeking to "preserve" the opportunity to initiate criminal prosecutions against all defendants are plainly out of order. Private plaintiffs have no right to have courts consider criminal charges against others, whether or not plaintiffs prevail against certain defendants on related civil claims. Moreover, "the federal courts have customarily refused to order the prosecution of particular individuals at the instance of private persons." **Rosquist v. Jarrat Construction Corp.,** 570 F. Supp. 1206, 1211 (D.N.J. 1983). Accordingly, the court will deny plaintiff's motions to amend to the extent that they seek to preserve rights to prosecute. Plaintiff's claims to this effect will likewise be dismissed.

B. ***Equal Protection***

Plaintiff has failed to allege any substantial basis for the equal protection claims raised in his second and third complaints. In pleadings filed January 23, 1985, in connection with his first complaint, plaintiff alleges that Judges Page and Menneti discriminated against him based on his gender and because his wife is a Superior Court employee. Nowhere in his submissions does plaintiff provide specific contentions to support these claims. Plaintiff's conclusory allegations are

insufficient as a matter of law. At very least, plaintiff is required to state some facts indicating unequal treatment connected with his status as a male or as the husband of a court employee. Plaintiff presents nothing to suggest defendants discriminated against him based on his gender or any other "invidious" or "irrational" classification. Consequently, plaintiff is unable to state a claim under the equal protection clause of the Fourteenth Amendment pursuant to 42 U.S.C. §§ 1983 and 1985. **See, e.g., Hagans v. Levine,** 415 U.S. 528, 541 (1973)(42 U.S.C. § 1983); **Griffin v. Breckenridge,** 403 U.S. 88, 102 (1971)(42 U.S.C. § 1985).

C. ***Claims Based on 42 U.S.C. § 1985***

In his first complaint, plaintiff alleges a conspiracy to deprive him of federally protected rights, a claim cognizable under 42 U.S.C. § 1985(3). Plaintiff's claims are founded on contentions that defendants sought to prevent him from appealing his divorce, from maintaining custody of his children and from participating in the disposition of his marital property, all in violation of the due process clause of the Fourteenth Amendment.

Section 1985(3) does not afford a right of action based on an alleged denial of due process rights. **Duff v. Sherlock,** 432 F. Supp. 423, 430 (E.D. Pa. 1977); **Oaks v. City of Fairhope,** 515 F. Supp. 1004, 1045 (S.D. Ala. 1981). Rather, the statute requires at least colorable contentions that a conspiracy involving state action involves "class-based animus." **See Petrone v. City of Reading,** 541 F. Supp. 735, 741 (E.D. Pa. 1982), and numerous other cases cited therein. As plaintiff has been unable to produce any facts suggesting intentional discrimination against him based on unlawful acts of classification, plaintiff's claims under 42 U.S.C. § 1985(3) must be dismissed for failure to state a claim upon which relief may be granted.

D. ***Judicial Immunity***

(i) Judges Page, Menneti, DiMartino and Wallace

Plaintiff's claims for damages against various members of the judiciary are barred by well-established doctrines of judicial immunity. Each of the judges named in the three

complaints are absolutely immune from liability for damages under the Supreme Court's decision in **Stump v. Sparkman,** 435 U.S. 349 (1978). Nothing in the lengthy pleadings submitted by plaintiff suggests that Judges Page, Menneti, DiMartino, or Wallace acted at any time with "clear absence of jurisdiction." 435 U.S. at 356-57. Judges Page and Wallace routinely hear divorce and child custody matters; Judge Menneti was assigned to do so by Judge DiMartino. As assignment judge for Camden County, Judge DiMartino has broad discretion to assign proceedings in Superior Court to any available judge. Nor has plaintiff made any specific factual contentions suggesting that the behavior of these men was improper in any way. Plaintiff has also failed to offer any indication that the alleged conduct of the four judges involved anything other than "judicial acts": that is, acts "normally performed only by judges" in the ordinary course of official duties. 435 U.S. at 360-61.[3]

Consequently, the court must dismiss plaintiff's claims for damages against defendants Judge Menneti, Judge DiMartino and Judge Wallace, as well as those against defendant Judge Page. This ruling renders moot the reinstatement of Judge Page as a defendant with respect to claims in Civil Action 84—3696 in so far as plaintiff seeks to impose monetary liability against Judge Page.

(ii) **William Hopkins, Court-appointed Expert**

The doctrine of judicial immunity applies to William Hopkins, the court-appointed psychologist whom plaintiff alleges gave perjured testimony and conspired with Judge Page to advance the claims of his wife. Plaintiff has failed to provide any substantiation whatsoever that Hopkins committed perjury or conspired with Judge Page to harm plaintiff's legal

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[3]/ Even if the judges' decisions resulted from a corrupt conspiracy, as plaintiff alleges (the court believes they did not), **see infra,** the judges are still absolutely immune from damages liability under 42 U.S.C. § 1983 for judicial acts within their jurisdiction. Dennis v. Sparks, 449 U.S. 24, 27 (1980). On the other hand, judicial immunity is not a bar to prospective injunctive relief against judicial officers acting in their official capacity. Pulliam v. Allen, _____ U.S. _____, 104 S. Ct. 1970 (1984).

position with respect to custody of his children. At very most, plaintiff's allegations support the conclusion that Hopkins' work was somewhat weak and that Judge Page exhibited less than exemplary judgment in selecting him. Such circumstances, even if true, do not give rise to liability under 42 U.S.C. § 1983. On the contrary, the acts of such persons "in the performance of an integral part of the judicial process" are protected by an absolute immunity, **Burkes v. Callion,** 433 F.2d 318 (9th Cir. 1970), **cert. denied,** 403 U.S. 908 (1971), as are those acts of persons performing under the direction of the judiciary. **Lockhart v. Hoenstine,** 411 F.2d 455, 460 (3rd Cir.), **cert. denied,** 396 U.S. 941 (1969). Accordingly there is no basis for plaintiff's claims for damages against Hopkins.

(iii) ***Camden County Court System***

Plaintiff's claims for damages against the Camden County Court system are as vague as they are untenable. To the extent that plaintiff asserts the institution is liable for the acts of court personnel simply because it is their employer, plaintiff relies on the doctrine of respondeat superior. Such a theory of liability is impermissible under 42 U.S.C. § 1983. **Hampton v. Holmesburg Prison Officials,** 546 F.2d 1077, 1082 (3rd Cir. 1976). Plaintiff is also barred from attibuting monetary liability to clerical staff acting in accordance with orders of the court, **Lockhart v. Hoenstine, supra,** 411 F.2d at 460, or of prosecutors, **Ross v. Meagan,** 638 F.2d 646, 648 (3rd Cir. 1981).

E. ***Prosecutorial Immunity***

The Attorney General of the State of New Jersey is immune from monetary liability under 42 U.S.C. § 1983 for all actions "intimately associated with the judicial phase of the criminal process," as well as "duties...in his role of advocate for the State" including activities preliminary to the initiation of litigation. **Imbler v. Pachtman,** 424 U.S. 409, 430 (1976). Such absolute immunity bars plaintiff's claims against the state Attorney General for failure to initiate actions against the state judges responsible for plaintiff's case. Even if plaintiff's claims are read to concern the Attorney General's administrative or investigative functions, he is likewise protected by a qualified immuni-

ty, as plaintiff has produced no allegation of malicious or even reckless behavior by the Attorney General. **See Imbler, supra,** 424 U.S. at 430-31[4].

Plaintiff's remaining claims are of three kinds. First, he seeks damages from seven private defendants who are not protected by doctrines of immunity. Plaintiff also asks for injunctive relief against the defendants named in his complaints to the extent that they are still involved in or have records related to a conspiracy to deprive him of due process rights. Finally, plaintiff demands removal of the issues in his state court litigation to federal court.

F. ***Claims Against the State of New Jersey***

Although plaintiff has named the State of New Jersey as a defendant in Civil Action 85-97, his complaint contains no specific claims whatsoever against this defendant; nor are any such allegations set forth elsewhere in plaintiff's pleadings. Accordingly, plaintiff's complaint against the State of New Jersey is dismissed for lack of subject matter jurisdiction. **Hagans v. Levine,** 415 U.S. 528, 538 (1974).

G. ***Removal***

Plaintiff wishes to remove his state matrimonial action to this court pursuant to 28 U.S.C. § 1441(c). Plaintiff requests preliminary injunctive relief to restore the status quo which prevailed prior to the events which first led plaintiff to sue in federal court. In addition, plaintiff asks the court to review prior orders of the state courts in his case. It is plaintiff's contention that this court should entertain his New Jersey family law claims, including an appeal of his final judgment of divorce, in conjunction with his federal civil rights claims. Plaintiff asserts that his state claims are directly connected to his federal causes of action. While it is true that plaintiff's federal and state claim both arise out of state family law proceedings, only his federal complaints address his alleged

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[4]/ Plaintiff is not barred from seeking injunctive relief against the state Attorney General. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736-37 (1980).

failure to obtain fair treatment in divorce, custody and property distribution proceedings in New Jersey Superior Court. Section 1441(c) states that

> Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or in its discretion, may remand all matters not otherwise within its original jurisdiction.

This statute is plainly inapplicable to the case at bar, which concerns separate actions in state and federal court. Plaintiff did not initiate removable claims in state court; rather, he filed suit on all his federal claims in federal district court. At this point, plaintiff seeks removal only of state law issues over which this court has no independent basis for asserting jurisdiction.

This court is extremely reluctant to involve itself in disputes which are ordinarily the exclusive province of the state courts. Unnecessary infringement on the jurisdiction of the courts of New Jersey would be contrary to the basic tenets of his nation's federal system of government. In short, this court has no business adjudicating matters of state family law which are the subject of ongoing proceedings in state court. It is well settled that "domestic relations is a field peculiarly suited to state regulation and control, and peculiarly unsuited to control by federal courts." **Magaziner v. Montemuro,** 468 F.2d 782, 787 (3rd Cir. 1972). "Traditionally, it has been the policy of federal courts to avoid assumption of jurisdiction in this species of litigation." **Id. See also In re Burrus,** 136 U.S. 593-94 (1890).

For all the reasons stated above, and because of significant doubts as to the validity of plaintiff's claims, plaintiff's motion for removal and preliminary injunctive relief is denied. The court will now address plaintiff's remaining substantive claims.

H. ***Conspiracy***

Under **Dennis v. Sparks,** 449 U.S. 24 (1980), an unsuccessful litigant in state court may bring charges of civil conspiracy, pursuant to 42 U.S.C. § 1983, against private citizens alleged to have acted in concert with state officials, including members of

the judiciary, with the purpose of depriving the plaintiff of due process rights under the Fourteenth Amendment. Although judges and prosecutors are protected from monetary liability, their absolute immunity does not extend to private co-conspirators. **Id.** at 428. As the court has previously noted, judges and prosecutors are not immune in such circumstances from claims for prospective injunctive relief.

In **Dennis,** the Court applied the rule that private actors "jointly engaged with state officials are acting 'under color' of law for purposes of § 1983." 449 U.S. at 28-29, citing, **inter alia, Adickes v. S.H. Kress & Co.,** 398 U.S. 144, 152 (1966). The Court qualified its ruling, however, by noting that "[o]f course, merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge." **Id.** at 29. Accordingly, the court will now consider the strength of plaintiff's allegation of conspiracy. The court must also determine whether plaintiff's contentions are sufficient to support an exercise of federal jurisdiction. That is, the court will examine the pleadings for allegations of joint activity between the state officials and the private defendants tending to show that the latter group acted under color of state law for purposes of 42 U.S.C. § 1983.

For the court to proceed with plaintiff's conspiracy claims, the pleadings must give rise to an inference that the private and public defendants "directed themselves toward...unconstitutional action by virtue of a mutual understanding or agreement." **Rosquist v. Jarrat Construction Corp.,** 570 F. Supp. 1206, 1211 (D.N.J. 1983); **Chicarelli v. Plymouth Garden Apartments,** 551 F. Supp. 532, 539 (1982). Vague and conclusory allegations as to the existence of a conspiracy are insufficient to sustain a cause of action under 42 U.S.C. § 1983. Plaintiff must allege specific facts to support his claims that the defendants acted jointly and with the purpose of violating his constitutional rights. **Hauptman v. Wilentz,** 570 F. Supp. 351, 375 (D.N.J. 1983); **Chicarelli, supra.** Such standards are in keeping with the policy in this Circuit which requires civil rights complaints to identify alleged misconduct with reasonable specificity so as to protect defendants from the vexation and expense involved in the defense of frivolous claims. **Rotolo v.**

Borough of Charleroi, 532 F.2d 920, 922-23 (3rd Cir. 1976). **See also Ross v. Meagan,** 638 F.2d 646, 649-50 (3rd Cir. 1981).

(i) **Civil Action 84-3696**

Several of the claims asserted by plaintiff against private defendants in his first complaint are not cognizable under 42 U.S.C. § 1983 as plaintiff fails to produce any evidence that the alleged acts were committed "under color of" state law. The pleadings show no connection between any acts of Judge Page and the alleged denial of notice to plaintiff regarding the November 9, 1983 hearing, or the refusal of counsel to adopt litigation tactics favored by plaintiff. Papers submitted by plaintiff indicate the parties asked Judge Page to hear the order to show cause only on the day of the hearing, and because Judge Yaskin was unavailable to decide the motion. "Complaint Amendment," December 28, 1984 at 2. Plaintiff arrived at the courthouse in time for the hearing after receiving notice from his attorney the day before. **Id.,** at 1-2. At best, plaintiff has stated valid criticism of attorneys Klein and Segal for failing to give him notice further in advance of the order to show cause. In any case, counsel did not commit this breach of etiquette under color of law.

Plaintiff has failed to allege anything to suggest that Klein acted jointly with Judge Page in deciding not to press the judge to recuse himself. Nor is there any evidence of Judge Page exercising any pressure on Klein so as to discourage him from filing an ethical complaint against the judge. "Complaint Amendment" at 3-4. Furthermore, nothing in plaintiff's allegations gives any indication of conspiratorial conduct with respect to Klein's decision to continue to participate in later proceedings before Judge Page on plaintiff's behalf. If anything, plaintiff's allegations assert claims against Klein which are cognizable under state tort law; they are plainly insufficient to sustain federal jurisdiction.

Plaintiff's remaining claims regarding the custody proceedings before Judge Page are deficient in that they include no basis for an inference that the private defendants reached a "mutual understanding or agreement" with Judge Page to deprive plaintiff of his civil rights. Viewed in the light most

favorable to the plaintiff, the pleadings contain only three items arguably relevant to plaintiff's claims of deprivation of due process by state officials in concert with the private defendants.

First and foremost, plaintiff contends that his wife "did work with" Judge Page "in the course of her employment with the Camden County Courts." Complaint, Civil Action 84-3696 at 4. According to plaintiff, the relationship caused Judge Page to favor plaintiff's wife; plaintiff suggests that at least, the situation presented an appearance of impropriety under the ethical guidelines for the legal profession. Plaintiff's charge of bias is conclusory and unsupported by any concrete evidence of special treatment. For instance, plaintiff offers no proof of the extent of any prior contacts between Mrs. Reardon and Judge Page. In particular, there is no indication Virginia Reardon works directly with Judge Page. Consequently, there is no reason to presume the two had a close working relationship, which might give rise to an inference of bias. Plaintiff simply claims that Judge Page's "disregard for plaintiff's rights [indicates] his predisposition to rule in favor of defendant Virginia E. Reardon." Complaint at 4. Were the court to find such broad allegations sufficient to support a colorable claim for conspiracy, it would be virtually impossible for court employees to pursue legal action within the jurisdiction where they work.

Plaintiff's other charges in Civil Action 84-3696 are based on nothing more than Judge Page's rulings against the plaintiff. Plaintiff errs when he insists that Judge Page acted without jurisdiction simply by approving Virginia Reardon's position with respect to a November 9, 1983 order to show cause. A federal cause of action cannot be based on the bare claim that Judge Page found "evidence...of irreparable loss" to the moving party when none existed. Complaint at 4. Plaintiff also fails to state a claim for voilation of his civil rights when he asserts that Judge Page acted improperly in February, 1984 by hearing an order to show cause off the record in the presence of counsel for both plaintiff and his wife. "Complaint Amendment" at 4. No inference of corruption arises merely because a party to litigation is excluded from proceedings between counsel and a judge.

All of these charges amount to the claim that defendants

acted lawfully and in concert merely because some of them invoked the jurisdiction of the court and plaintiff was not on the "winning side." **See Dennis v. Sparks, supra,** 449 U.S. at 28-29. Plaintiff fails to allege any facts which support an inference that defendants acted in any way inconsistent with their professional roles, much less that they agreed to deprive plaintiff of his rights.

Finally, plaintiff alleges Judge Page relied on biased testimony of William I. Hopkins, a court-appointed expert. As set forth above, plaintiff does not produce any evidence that Judge Page or Hopkins acted wrongfully. Furthermore, plaintiff's pleadings contain no specific contentions indicating a "mutual understanding or agreement" to deprive plaintiff of his rights. It is also important to note that since the filing of plaintiff's federal complaints, Judge Page has agreed to recuse himself from further responsibility in plaintiff's case.

In light of the conclusions above, the complaint in Civil Action 84-3696, as amended twice by plaintiff, does not support a cause of action for conspiracy against the defendants, or a claim for injunctive relief against the state defendants, under 42 U.S.C. § 1983. Accordingly, plaintiff's remaining claims in this case are dismissed for lack of subject matter jurisdiction or failure to state a claim upon which relief may be granted. Plaintiff's motion for various forms of injunctive relief, filed January 25, 1985, is likewise dismissed. The cross-motion to dismiss for failure to effectuate service is therefore moot.

(ii) **Civil Action 84-5203**

In his second complaint, plaintiff asserts various claims over which the court lacks subject matter jurisdiction, as they involve purely private conduct. Plaintiff has offered no support for his claim that Judge Page or any other state official "acted behind the scenes" or in any way conspired to cause plaintiff to lose his rights to appeal his final judgment of divorce. The pleadings plainly indicate that plaintiff failed to file a timely appeal because of his own acts and those of his counsel, Richard Klein, Esquire. Both plaintiff and Klein knew of the deadline to file an appeal, but neither submitted papers prior

to the expiration of the deadline.

The pleadings also fail to support an inference of action under color of law with respect to two other claims by plaintiff: that plaintiff received inadequate notice of an order to show cause heard September 14, 1984; and that Richard Klein, Esquire involved plaintiff in an illegal mortgage agreement. Viewing the facts alleged by plaintiff in the light most favorable to his cause, the court finds nothing to indicate that these events consisted of anything other than private conduct by the attorneys who handled these matters and by their clients.

The court observed above that a review of the pleadings reveals no specific factual allegations of any acts by the state of defendants which are in any way improper. Plaintiff's claims that Judges DiMartino, Wallace and Menneti acted beyond the scope of their jurisdiction and discretion are frivolous. The same conclusion applies to plaintiff's claims against the state Attorney General and unnamed persons in the Camden County courts. Accordingly, plaintiff may not proceed with his claims for injunctive relief and conspiracy based on such assertions.

Once again, the prinicpal basis for plaintiff's conspiracy charges and his claims for injunctive relief is the existence of contacts between his wife and a New Jersey Superior Court judge, in this instance Judge Menneti. This position is as tenuous as his accusations against Judge Page in his initial complaint. Plaintiff merely asserts Judge Menneti and Virginia Reardon have a "cordial" work relationship and that judges are prone to show favoritism toward court employees. Plaintiff cites the transcript of a September 14, 1984 hearing before Judge Menneti to show his bias.[5]. Instead, the transcript

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[5]/ Judge Menneti: Didn't I enter an order with you and your wife when I was in Matrimonial court?

John Reardon: Not that I know.

Judge Menneti: You wanted an increase and I denied it. You were paid $80 a week?

John Reardon: That's what I'm paying.

Judge Menetti: She came in for an increase.

John Reardon: You got me.

Footnotes cont. on next page

indicates that the judge has been willing in the past to rule on plaintiff's case in an even-handed fashion regardless of his contacts with Virginia Reardon. Even viewed in the light most favorable to plaintiff, the pleadings are insufficient to support an inference that plaintiff is capable of proving a conspiracy between the defendants, or even individual bias on the part of Judge Menneti.

The court is also unable to discern any evidence of a "mutual understanding or agreement" to deprive plaintiff of any rights in connection with Klein's decision to withdraw as plaintiff's counsel. The transcript of the September 14, 1984 hearing shows that Judge Menneti first heard of Klein's wish to withdraw at the hearing. Nothing elsewhere in the pleadings suggests otherwise. The transcript also demonstrates that the judge approved the request after plaintiff expressed his consent. Transcript at 15-18.

Finally, the court finds plaintiff's pleadings insufficient to state a claim under 42 U.S.C. § 1983, based on allegations that Judge Menneti conspired with Maffucci Realty, Edward Kelleher and others to release a deposit submitted to the court by a potential buyer of the Reardons' home, without plaintiff's permission. The proposed amendment to the complaint contains nothing to suggest Judge Menneti acted beyond the discretion he exercises in matrimonial matters. If anything, the record indicates that Judge Menneti has been acting to protect plaintiff's interests in the value of his home[6]. The court finds plaintiff's allegations vague and conclusory. Plaintiff asserts no

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[5]/ Cont. from previous page

Judge Menetti: In fact, she got angry with me because I didn't allow it. If I remember, she wouldn't talk to me for a few weeks.

Complaint, Civ. No. 84-5203, Exhibit XVIII, at 2.

[6]/ For instance, the transcript of the September 14, 1984 hearing shows Judge Menneti struggling to inform plaintiff as to procedures necessary to dispose of his property and to avoid foreclosure on the house. Without advice of counsel, and suspicious of the court, plaintiff resisted such measures designed to further his interests simultaneously with those of his ex-wife. Complaint, Civ. No. 84-5203, Exhibit XVIII at 8-27.

facts tending to suggest Judge Menneti acted contrary to law, or pursuant to a "mutual understanding or agreement" to harm plaintiff's interests.

In light of the findings discussed above, all claims raised in plaintiff's second complaint, and the amendments thereto, are dismissed for lack of subject matter jurisdiction or failure to state a claim upon which relief may be granted. In accordance with this ruling, plaintiff's motion for final judgment by default in this matter is denied.

(iii) **Civil Action 85-97**

Plaintiff's third complaint concerns Judge Menneti's recent decision to appoint an attorney to act on plaintiff's behalf with respect to the sale of the Reardons' house. The supporting papers filed by plaintiff do not substantiate his charges of a conspiracy between Judge Menneti, other state officials and private citizens to deprive plaintiff of property rights without due process. The court has examined the record and has evaluated the allegations therein in the light most favorable to plaintiff. On this basis, the court finds no specific factual contentions indicating unconstitutional acts by the public defendants themselves, or a "mutual understanding or agreement" between the public and private defendants aimed at infringing plaintiff's rights. As with plaintiff's other claims, the court finds that the pleadings only support the conclusions that plaintiff has been unable to prevail on positions he has taken in ongoing litigation in state court.

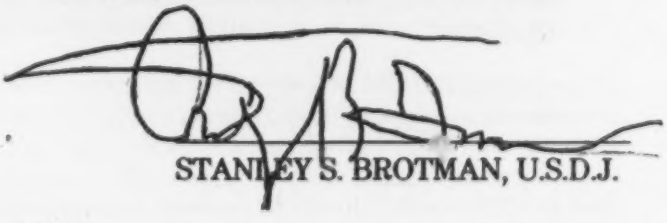
Even when the court draws all reasonable inferences in plaintiff's favor, it determines that plaintiff's conspiracy claims, and his contentions regarding injunctive relief against the public defendants individually, are meritless. Accordingly, these claims, and plaintiff's complaint in Civil Action 85-97 are dismissed.

Summary and Conclusion

Plaintiff has presented numerous claims to this court. Each of plaintiff's requests to supplement and amend his pleadings has been granted. The court has given thorough consideration to all of the material contentions raised by plaintiff, and treated with every claim arguably asserted therein. Plaintiff appears to have suffered considerable hardship and distress in the course of his proceedings in state court related to his divorce. It is always unfortunate when a party loses rights to appeal an adverse determination by the courts. However, plaintiff's grievances do not warrant proceeding in the federal courts.

This court concludes that dismissal of these claims is warranted. Plaintiff has presented the court with voluminous submissions which allege no substantial claims. Plaintiff has had ample opportunity to state the basis for his various claims. Plaintiff and the defendants also presented their views on dismissal of plaintiff's claims at oral argument. Accordingly, in the interests of judicial economy, the court, on its own motion, has addressed the inadequacy of plaintiff's claims as a matter of law and has reached the conclusions herein set forth.

In summary, plaintiff's motions to amend further his complaints in Civil Actions 84-3696 and 84-5203 are (1) granted, insofar as he seeks to supplement his factual allegations, and (2) denied to the extent he asks the court to recognize his right to influence the bringing of criminal proceedings against the defendants. The court consolidated plaintiff's three civil actions and dismissed each and every claim asserted in these cases. Accordingly, plaintiff's complaints are dismissed. Any other pending motions involving any of the within cases are deemed moot, in light of the court's determination herein. An order incorporating the foregoing will be entered.



STANLEY S. BROTMAN, U.S.D.J.

Dated: March 20, 1985